

then the special rules under paragraph (2) shall be used in applying subsections (a) and (d) of this section and section 4219(c) to the employer.

“(2) SPECIAL RULES.—

“(A) DETERMINATION.—Notwithstanding subsection (a)(3)—

“(i) a determination by the plan sponsor under paragraph (1)(B) shall not be presumed to be correct, and

“(ii) the plan sponsor shall have the burden to establish, by a preponderance of the evidence, the elements of the claim under section 4212(c) that a principal purpose of the transaction was to evade or avoid withdrawal liability under this subtitle.

Nothing in this subparagraph shall affect the burden of establishing any other element of a claim for withdrawal liability under this subtitle.

“(B) PROCEDURE.—Notwithstanding subsection (d) and section 4219(c), if an employer contests the plan sponsor's determination under paragraph (1) through an arbitration proceeding pursuant to subsection (a), or through a claim brought in a court of competent jurisdiction, the employer shall not be obligated to make any withdrawal liability payments until a final decision in the arbitration proceeding, or in court, upholds the plan sponsor's determination.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to any employer that receives a notification under section 4219(b)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1399(b)(1)) after October 31, 2003.

SA 2234. Mr. KYL proposed an amendment to amendment SA 2233 proposed by Mr. GRASSLEY (for himself, Mr. BAUCUS, Mr. GREGG, and Mr. KENNEDY) to the bill H.R. 3108, to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to temporarily replace the 30-year Treasury rate with a rate based on long-term corporate bonds for certain pension plan funding requirements and other provisions, and for other purposes; as follows:

At the end of section 3, insert:

() LIMITATIONS ON PBGC LIABILITY FOR PLANS TO WHICH ALTERNATIVE DEFICIT REDUCTION CONTRIBUTION APPLIES.—

(1) IN GENERAL.—If a plan with respect to which an election under section 412(l)(12) of the Internal Revenue Code or section 302(d)(12) of the Employee Retirement Income Security Act of 1974 (as added by this section) is made terminates during the applicable period, the maximum guarantee limitation under section 4022(b)(3) of such Act, and the phase-in rate of benefit increases under paragraph (5) or (7) of section 4022(b) of such Act, shall be the limitation and rates determined as if the plan terminated on the day before the first day of the applicable period.

(2) APPLICABLE PERIOD.—For purposes of paragraph (1), the term “applicable period” means, with respect to any plan, the period—

(A) beginning on the first day of the first applicable plan year with respect to the plan, and

(B) ending on the last day of the second plan year following the last applicable plan year with respect to the plan.

For purposes of this paragraph, the term “applicable plan year” has the meaning given such term by section 412(l)(12) of the Internal Revenue Code of 1986 and section 302(d)(12) of the Employee Retirement Income Security Act of 1974 (as added by this section).

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on January 22, 2004, at 9:30 a.m., in closed session to receive a classified operations/intelligence briefing regarding ongoing military activities in Iraq and Afghanistan, as well as other areas of interest.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on Thursday, January 22, 2004, at 10 a.m., on “Judicial Nominations,” in the Dirksen Senate Office Building Room 226.

Panel I: Senators.

Panel II: Raymond W. Gruender to be United States Circuit Judge for the Eighth Circuit.

Panel III: Ricardo S. Martinez to be United States District Judge for the Western District of Washington, Gene E.K. Pratter to be United States District Judge for the Eastern District of Pennsylvania, Neil Vincent Wake to be United States District Judge for the District of Arizona.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. LOTT. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on January 22, 2004 at 2:30 p.m. to hold a closed hearing on Intelligence Matters.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGES OF THE FLOOR

Mr. GRASSLEY. Mr. President, I ask unanimous consent that Kathleen West, a fellow on the Finance Committee staff, be permitted access to the floor during debate on the Pension Funding Equity Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that people on Senator BAUCUS's staff, Jane Bergeson, Simon Chabel, and Trace Thaxton, interns with the Finance Committee, be granted the privilege of the floor for the remainder of the debate on H.R. 3108, the 30-year Treasury bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE SENATE WEEK

Mr. FRIST. Madam President, I take a minute and again welcome everyone back for this second session, this being close to completion of the first week. We have had a very good and productive week in the Senate.

The President delivered his State of the Union Address Tuesday night, which is always an uplifting experience for all who have the opportunity to participate directly. And very much I express my appreciation for his very positive, constructive message as we all work together to move this country forward. Indeed, as the President said, the state of the Union is strong, and it is confident.

Today we were able to finish our appropriations work for this fiscal year, really the unfinished business for last year. It took a strong, bipartisan vote of 65 to 28. And with that, we adopted the Omnibus appropriations conference report, which will allow us to proceed to a regular order for this upcoming fiscal year.

In a few moments we will be considering and confirming several executive nominations. We have been working on that over the course of this afternoon. We will continue to discuss further nominations tomorrow, and I am very hopeful we will have a number of other nominations to be approved tomorrow. I am personally appreciative and glad we have been able to continue this process. It is important for us to continue that work and bring these nominations forward as soon as they are available.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. FRIST. Madam President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations on today's Executive Calendar: Calendar Nos. 511, 512, 513. I further ask unanimous consent that the nominations be confirmed en bloc, the motions to reconsider be laid upon the table, and the President be immediately notified of the Senate's action.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF VETERANS AFFAIRS

Cynthia R. Church, of Virginia, to be an Assistant Secretary of Veterans Affairs (Public and Intergovernmental Affairs).

Robert N. McFarland, of Texas, to be an Assistant Secretary of Veterans Affairs (Information and Technology).

Gordon H. Mansfield, of Virginia, to be Deputy Secretary of Veterans Affairs.

NOMINATION DISCHARGED

Mr. FRIST. Madam President, I ask unanimous consent that the nomination of James C. Miller III, PN99, be discharged from the Governmental Affairs Committee, returned to the President, and the Senate then resume legislative session.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.